An overview of insider dealing law and policy: a Chinese perspective (part two)

Article

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An Overview of Insider Dealing Law and Policy: A Chinese Perspective

(Part Two)

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Critical Review of Elements Necessary to Establish Liability under Securities Law of People's Republic of China 2020

To establish legal liability in insider dealing cases under the Securities Law of People's Republic of China 2020 (SL 2020), it is necessary to demonstrate three elements: (1) the person's status as an insider; (2) possession by the person of inside information; and (3) the type of trading activity conducted by him amounting to prohibited insider dealing.[4]

Insiders

The first important part of the insider dealing prohibitions under the SL 2020 and the CL 1997 is the definition of the parties to whom they refer. It appears that China's insider dealing regulations are not only complex, but also show no willingness to define 'insider' with any precision. They not only make a distinction between 'persons in possession of inside information' and 'persons obtaining (inside) information unlawfully', but specifically use these two terms rather than 'insiders'; also the SL 2020 and the CL 1997 only provide the scope, not the definitions, of the two terms. Nevertheless, it can be said that Chinese legislation abolished the 'person–connection' approach, adopted in the IMPSFC 1993, and instead applied an 'information connection' test. Insider status is to be established upon proof of possession of inside information. For the purpose of simplifying the following discussion, 'persons in possession of inside information' and 'persons obtaining (inside) information unlawfully' are

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[4] The SL 2020, article 50 -54.

referred to as ‘primary insiders’ and ‘misappropriators’ respectively, while the term ‘insiders’ will be used in this paper as a collective term for those two.[5] It is now necessary to compare the insider dealing provisions under article 180 of the CL 1997 and the IID 2012 with the provisions under the SL 2020.

Firstly, it can be said the two statutory tests of primary insider under the CL 1997 and SL 2020 are mostly consistent. The reason for the consistency is that article 180 of the CL 1997 provides that the scope of persons with knowledge of inside information shall be determined in accordance with the provisions of laws or administrative rules and regulations, which now mainly refers to article 51 of the SL 2020. However, it does not mean that the provisions are identical. In fact, the CL 1997 and IID 2012 have a broader scope than that of the SL 2020 as a result of a newly introduced offence, Trading by Making Use of Undisclosed Information, to tackle so-called ‘rat trading’. [6] Subsequently, the IID 2012 expands the scope of primary insiders to cover not only those falling within the scope of article 51 of the SL 2020, but also those specified in article 85(12) of the Regulations on the Administration of Futures Trading 2007 (AFTR 2007). A problem occurs where this article has been renamed as ‘article 82’ in accordance with the Decision of the State Council on Amending the ‘Regulations on the Administration of Futures Trading’ in 2012, while the IID 2012 fails to update article 1 correspondingly. Although the AFTR 2007, especially its interpretation provision governing insider dealing, has been referred to in the IID 2012, its jurisdiction has been restricted to China’s futures markets rather than the securities markets as a whole.

Primary Insiders

A primary insider is himself an inside source of inside information and his possession of inside

[5] The CSRS’s Insider Dealing Directive is the only one which has explicitly used the term ‘insiders’ and defined it to include anyone who has obtained, directly or indirectly, inside information prior to its public disclosure. A ‘person’ includes a natural person as well as a unit. The latter refers to a company, enterprise, public institution, governmental body or social organisation.

[6] In a case of rat trading, a practitioner of a specific financial institution (which includes a stock exchange, futures exchange, securities company, futures brokerage company, fund management company, commercial bank, insurance company or any other financial institution or any staff member of the relevant regulatory department or industry association) misappropriates his personal fund to open a position in low order before using public funds to rise the market price of the subject securities, and when the public fund has raised the price to high order, the person will take the lead to sell the securities.

information is legitimate under China's legislation. The SL 2020 does not provide any definition, only a list of insiders covering a range of insiders who have a relationship with the company that enables them to access inside information legally, usually in the proper course of their function. Article 51 of the SL 2020 focused on the personnel in listed companies and the intermediaries of the securities market. Those are as follows: 1. issuers of the securities and the directors, supervisors of the supervisory board, and senior management of the issuers; 2. shareholders holding more than 5% of the listed companies and the directors, supervisors of the supervisory board, and senior management of the listed companies; 3. actual controllers of the listed companies and their directors, supervisors of the supervisory board, and senior management; companies controlled by the issuers and their directors, supervisors of the supervisory board, and senior management; 4. anyone who may have access to inside information during their course of employment or during their business dealing with the listed companies; 5. offeror companies or parties of significant transactions of the listed companies and their controlling shareholders, actual controllers, directors, supervisors of the supervisory board, and senior management; 6. employees of securities sponsors, securities firms, stock exchanges, securities registration and clearing institutions, and securities service providers who may have access to inside information during their course of employment; 7. civil servants of securities regulatory bodies who may have access to inside information during their duty and course of employment; 8. civil servants working in government departments responsible for or having a supervisory role in the issuance and trading of securities or takeovers and significant transactions of listed companies who may have access to inside information during their course of employment; 9. any other parties who may have access to inside information as defined by the securities supervisory body of the State Council.

Directors, supervisors and officers are the most common types of insider to be covered by China's insider dealing regulations.[7] Their position in the administrative, management or supervisory bodies of the issuer makes them the most likely persons to have access to non-public material information with which the law is concerned. In *She Jinlin*, the defendant was a director and general manager of a listed company. He argued that he was not in possession of the inside information in question because he did not know it. The CSRC stated that his posts in the company not only gave him full access to the information, but also required him to access

[7] The SL 2020, article 51 and AFTR 2007, article 82(12).

the information in order to perform his job according to the company's protocol; he had been present every working day during his office without any abnormal absence. Therefore, he was an insider who was subject to the insider dealing prohibitions.[8] The SL 2020 does not address whether 'de facto directors' (persons who actually carry out duties as directors) without having the corresponding titles, or 'shadow directors' in the UK company laws, are included.

As to other senior members of management of an issuer, Companies Law of the People's Republic of China 2018 (Companies Law 2018) defines 'senior managers' as including any manager, deputy manager, financial principal, secretary to the board of directors of a listed company, or any other person specified in the articles of association in article 216 (1). The CSRC had earlier specified that a secretary of the board of directors of a listed company was a company's senior manager in the Secretary of the Board of Directors of Foreign Listed Company Directive.[9]

In general, as far as directors, supervisors and senior managers are concerned, a person could be liable under insider dealing regulation if he purchases or sells the securities in question while in office as a director, supervisor or senior manager. As far as directors,

supervisors and officers are concerned, under article 141 of the Companies Law 2018, a person who ceases to be a director, supervisor or senior manager is prohibited from transferring the company's shares in his possession within six months from the day he is removed from his office. While the person's disposal of his company shares is clearly prohibited, the legislation fails to address whether his acquisition of the securities within this six-month period is also prohibited. It is also arguable whether a legal person is permitted to hold a post of director or supervisor. Technically, shareholders can be directors or supervisors of companies even if they have legal person status.

It could therefore be assumed, as there has not been any explicit provision in the Companies Law 2018 or other relevant regulations, that a legal person could be a director. In practice, a director or supervisor with legal person status will designate a natural person, probably their

[8] CSRC Administrative Sanction Decision (on *She Jinlin*) [2010] No 2.
[9] Secretary of the Board of Directors of Foreign Listed Company Directive, article 1.

legal representatives, to discharge the legal person's duty.[10]

China's insider dealing regulations and legislation also provide that liability is upon any person being a 5 percent shareholder of a company, an actual controller or a company beneficially owned by an issuer; if such a person is a legal person, its directors, supervisors and senior managers could be deemed insiders.[11] One justification for the proposition that a beneficial owner of 5 percent shareholding can be liable for insider dealing under the regulations seems to be that his ownership may enable a shareholder to participate in the affairs of the company, such as in the appointment and dismissal of directors, supervisors and senior managers, thereby allowing him to exert considerable influence over the company.[12] The 'ten+ per cent beneficial owner' standard common in the US and the UK is not followed in China. Some argue that in view of the wide dispersal of shareholdings, this not only fits in with China's special conditions, in terms of immature securities markets, but is also conducive to effective control of insider dealing.[13] Insider status is also to be established if a person is an actual controller of a company as his actual control over the company is very likely to give him access to non-public material information. The term 'actual controller' is generally defined in article 216(3) of the Companies Law 2018 to include anyone who is not a shareholder of the company but able to control the actions of the company by means of investor relations, agreements or any other arrangements. An actual controller can be a natural or legal persons, regulatory departments of state-owned assets or other institutions, or natural persons accorded control as the result of some agreement among shareholders, including those with actual control status resulting from a relationship of trust.[14]

Article 51(4) of the SL 2020 provides a rather general definition which includes a much broader group than the third category of primary insiders: persons who are likely to access inside information by virtue of their employment, profession or duties. It is not necessary that such a person has occupied a position of access, but he must have the information, through being an employee, to establish insider status. This group contains two subcategories: those

[10] Fuqiang Lv, *Legal Perspectivity of the Information Disclosure* (The People's Court Press 2000) 78.
[11] The SL 2020, article 51.
[12] According to Companies Law 2018 , article 103, the voting rights of a shareholder at shareholders' meetings follow a one- vote-one-share rule. A five-percent shareholder may be deemed a controlling shareholder if it satisfies the criteria set out in Companies Law 2018, article 216(2).
[13] Liang Yang, *Discussing Insider Dealing* (Peking University Press 2001)55.
[14] Rules of Forms and Contents of the Information Disclosure of Companies that Publicly Issue Securities, article 24(3).

who are employees of the company other than directors, supervisors or senior managers (also referred as 'low-level employees' or 'junior employees')[15] and those who are employed outside the company.

As to the second sub-group, two types of insider are covered. The first type are those who work in companies or institutions that have a contractual relationship with the company concerned, including its lawyers, accountants, certified public valuers, investment advisers and relevant staff members of the sponsors, securities companies engaged as underwriters, stock exchanges, securities registrar and clearance institutions and securities service institutions. The second type includes those who have business relationships with the company in question outside the above category, such as journalists, editors, typists and pressmen.

The scenario in which a journalist is deemed to be an insider deserves mention here. In many cases, for the purpose of publicity or promotion of new products, companies may contact journalists of influentially financial newspapers, tipping them with certain non-public information (part of which may be price-sensitive) which could be published in the newspapers right after the disclosure of the information, while some journalists may take advantage of access to information to profit themselves by trading in the subject securities on the basis of such information.[16]

In addition to fiduciary, employment, contractual and business relationships, there is another type of relationship that may give a person access to inside information: the administrative relationship. Accordingly, public servants who hold their officers in any securities regulatory authority or the futures regulatory authority of the State Council and other relevant authorities, or those who perform a statutory administrative duty in respect of the issuance and trading of securities, are held to be subject to insider dealing prohibitions under the SL 2020 and the CL

[15] See for example CSRC Administrative Sanction Decision (on Li Jianxing) [2009] No 45 (the insider was the assistant to the general manager of the financial centre of a listed company which not only had participated in the auditing process but had also had privileged access to the company's final annual financial statement 2007 and additional information in interim reports).

[16] CSRC Administrative Sanction Decision (on Xia Xiongwei) [2009] No 26 (the insider was the Chief Correspondent of *Securities Times China,* a major journal, in Huangzhou who acquired inside information through interviewing a representative of the company whose securities were traded).

1997.[17] However, persons with access to important information affecting the market price of securities are not confined to the above categories.

Misappropriators

The second major category of insider is that of misappropriators. In sharp contrast to the primary insiders above, misappropriators not only have inside information directly or indirectly from an inside source that is a primary insider within the scope discussed above, but also acquired the information by illegal means. It is not necessary that such person is connected to the company whose securities are traded; he is simply classed as an outsider. While the phrase 'obtaining such information unlawfully' appear in the SL 2020, the legislation fails to provide any functional provisions to specify what means are deemed unlawful, which in practical terms leads to the situation where a broad range of irregularities may not be covered. Nevertheless, it is generally considered that reference should be made to article 2 of the IID 2012, which specifies three types of misappropriator. It must be pointed out, however, that article 2 of the IID 2012 explicitly limits the application of the above categories of misappropriator to cover only those who illegally obtained inside information on securities and futures trading specified in paragraph 1 of article 180 of the CL 1997, but not articles 50 and 53 of the SL 2020. This creates a potential loophole for the application of the SL 2020.

Nevertheless, any person whose possession of inside information is a result of criminal activity (including stealing, swindling, extraction, eavesdropping, luring, spying or private deal, is obviously covered under the IID 2012.[18] This seems to suggest that to establish insider status under this provision, a person must have intended to deceive, manipulate, defraud or other forms of misappropriation. Examples of overt illegal conduct include defrauding an insider of inside information or monitoring an insider's phone to acquire information. In such case, it is easy to establish the person's status as an insider. In other cases, accidentally overhearing a

[17] In *Li Qihong and others,* where Li Qihong was the Mayor of Zhongshan City, Guangdong Province at the time. Another defendant, Tan Qingzhong who was the president of Zhongshan Public Utilities, planned to invest all his capital into the Zhongshan Public Technology Company. The company was then set to be floated on the stock market. In June 2007 Tan reported the project to the municipal leaders, and Li Qihong was put in charge of the project. Tan suggested to the defendant that he buy some of the company's shares - because the cost of the shares would go up after the public floating. In late June that year, Li Qihong asked her sister-in-law Lin Xiaoyan to buy the shares: *Li Qihong* [2011] Guangzhou Intermediate People's Court, Guangdong Province, Huizhongfa Xinger Chuzi, No 67.
[18] Article 2(1).

conversation containing inside information or picking up a notebook or materials in the street containing inside information, the situation is not so clear- cut. Since in such cases the finder acquires the information without contravening any regulation, is use of such information not in fact a violation of the law?

Reasonably clear also is the liability of a person of close kinship with a primary insider. The basis of the proposition that a close or lineal relative of a primary insider who is outside the company may be liable under the CL 1997 is easily understandable; the intimate family connection makes his access to inside information held by his inside-source-relative convenient and likely.[19] The problem arises as to who should be regarded as a close relative of a primary insider since the statutory definition or scope cannot be found in the CL 1997. Again, reference may be made to article 6(1) of the Insider Dealing Directive, in which the CSRC lists close/lineal relatives, including spouses, offspring, parents, siblings and other relatives of insiders.[20]

The third category of persons who might be liable as a result of tipping, as tippees, are those who have acquired inside information from a source which could only be a primary insider, through having contacts with the insider. The reason why such a tippee is categorised here is that an insider who falls within the scope of article 51 of the SL 2020 is prohibited from disclosing inside information to any other person according to article 53 of the SL 2020, and if the tippee acquires inside information from such inside source, his possession is illegal per se.

Inside information

The definition of 'inside information' is found in article 52, article 80(2) and article 81 (2) of the SL 2020, being unpublished information concerning the business or financial position of a listed company (issuer of the securities in question) or having significant effect on the market price of the securities in question. This touches the foundation of insider dealing: illegally abusing information concerning the securities of a company, or the company itself, which has

[19] 'Was Wang Shi's Wife A Suspect of Insider Dealing?' <http://money.163.com/special/00252BE0/wslp.html> accessed 7 April 2020.

[20] *Sihuan Yaoye Jin Feng* and *Yu Mei* Case was the first case that the CSRC brought an administrative action against wife of an insider who was the CEO assistant of a listed company on the ground that she had possessed inside information by virtue of her marriage.: CSRC Administrative Sanction Decision (on Sihuan Yaoye Jin Feng and Yu Mei) [2009] No 4.

not been disclosed to the public in order to make profits or avoid losses. Thus the determination of ‘inside information’ is the core element of establishing insider dealing liability.

This definition of inside information specifies three characteristics of inside information: non-disclosure, relevancy and materiality. Careful reading of the provision, however, suggests otherwise. It is clear that the SL 2020 proscribes inside information to be unpublished. The question arises when the word ‘or’ is used between ‘relating to the business or financial position of a company’ and ‘carrying significant effect on the market price of the securities of a company’. It not only distinguishes relevancy from materiality, but also, most importantly, indicates that to constitute inside information, the unpublished information in question must have either of the additional characteristics. In other words, the SL 2020 only requires two elements of inside information, the second being an alternative choice.

Non-Disclosure

The first element of inside information is straightforward: the information must be unpublished. The SL 2020 does not provide a definition of ‘published’, let alone state the circumstances in which an item of information is deemed to have or not to have been published. Instead, it develops the ‘publishable information’ test, relying fundamentally on a mandatory disclosure system under Chapter 5 of the SL 2020.

Meanwhile, the law also specifies the methods of disclosure, including publishing on the websites of the stock exchanges and any of the CSRC’s approved media and placing in both the company’s head office and the stock exchanges. Accordingly, information is deemed to be published if it has been made known only through all of the said methods. The second method would seem to say no more than that a listed company must ensure that the disclosed information is available and publicly accessible.

Information that is deemed effectively disclosed according to law immediately upon release, however, does lead to concerns about the length, if any, of a putative post- announcement waiting period. Article 86 of the SL 2020 could imply that investors, especially ordinary investors, are able to react instantaneously to newly released information. In practice, however,

a reasonable period should be required for investors to absorb such information, since mere public announcement of the information does not necessarily amount to public availability. Such a post-announcement waiting period is not actually required by insider dealing regulations in China; however, even though it has been recognised in common practice at the Shanghai Stock Exchange and the Shenzhen Stock Exchange and approved by the CSRC, the latter has said that if a listed company has material information it is about to disclose in the form of periodic or temporary reports, a routine suspension in the trading of its securities should be imposed for the first or opening hour of the trading day. One big reservation of the authors, however, is whether a single hour is sufficient for investors, especially ordinary investors, to absorb the information and make reasonable investment decisions, because individuals vary greatly in terms of their professional knowledge and their ability to understand.

Relevancy

In addition to non-disclosure, the SL 2020 requires that the information must relate to the business or financial activities of a specific issuer of securities. The types of business or financial activities covered by the SL 2020 are listed in article 52(2), article 80(2) and article 81(2) of the SL 2020. Article 52(2) and article 80(2) include transactions involving any undisclosed information about the operation and finance of the issuer or any undisclosed information that may affect the market price of the securities; significant changes in the business plan and business scope; significant investment activities which involve purchasing and selling the company's major asset exceeding the value of 30% of the company's total assets, or the assets that the company used as a pledge, mortgage, sale, or scrap exceeding the value of 30% of the company's total assets; signing of significant contracts, providing significant securities or conducting connected transactions, which might affect heavily on the company's assets, debt, rights and profits; breaching loan contracts due to an inability to repay; significant monetary loss or significant monetary damage; significant changes in the external business environment for the company chairman or the senior management not able to fulfil their duty because of changes of directors, more than one third of the supervisors of the supervisory boards, or senior management; significant change in the shareholding of the shareholders holding more than 5% of the company's shares or actual controllers of the company; major change in companies controlled by the actual controllers which conduct the same or similar businesses with the company; significant change in dividend distribution plans, capital increase plans, and the

ownership structure of company; corporate decision on capital reduction, merger, separation, dismissal, and insolvency, or going into insolvency procedure or closing business in accordance with the law and administrative order; significant litigation or mediation; resolutions of shareholders meeting or board meeting withdrawn or announced void in accordance with the law; investigations into the company in accordance with the law, controlling shareholders, actual controller, director, supervisors of the supervisory board, and senior management of the company detained because of involvement in a criminal offence; and other circumstances listed by the securities supervisory body of the State Council.

Article 81(2) of the SL 2020 stipulates that significant business events that affect the corporate bond price of a company is inside information. This is a new feature of the SL 2020 as the SL 2020 expanded its jurisdiction to include corporate bonds for the first time. The types of business or financial activities covered by the SL 2020 article 81(2) of the SL 2020 are a significant change in ownership structure and business operation; a change in the credit rating of the corporate bond; a pledge, mortgage, sale, transfer and scrap of significant assets of the company; an inability to repay debt on the due date; an increased loan or guarantee provided exceeding 20% of the year end net asset in the previous year; giving up creditor's rights or assets exceeding 10% of the year end net asset in the previous year; suffering losses exceeding 10% of the year end net asset in the previous year; significant change in dividend distribution plans, capital increase plans, and in ownership structure of the company, corporate decision on capital reduction, merger, separation, dismissal and insolvency, or going into insolvency procedure or closing business in accordance with the law and administrative order; significant litigation or mediation; investigations into the company in accordance with the law, controlling shareholders, actual controller, director, supervisors of the supervisory board, and senior management of the company detained because of involvement in a criminal offence; and other circumstances listed by the securities supervisory body of the State Council.

Prohibited conducts

The next issue of insider dealing liability is which types of conduct come within the insider dealing regulations. The SL 2020 and CL 1997 place an absolute embargo on dealing in the

subject securities on the basis of inside information. Similarly, divulging that information or suggesting others to trade in those securities is prohibited.

This seems straightforward enough, but there is one problem. Any person in possession of inside information is prohibited, both under the SL 2020 and CL 1997, from dealing, tipping and making trading suggestions to others, only prior to the public disclosure of the information that levels the playing field of investors and certain types of persons are prohibited from doing so within six months from the information being disclosed. Such a period of time is prescribed under the IID 2012 as 'sensitive period of inside information', referring to the period between the formation and publication of the inside information. The occurrence time of 'major events' prescribed in paragraph 2 of article 80 and article 81 of the SL 2020, therefore, is vital in deciding on the 'sensitive period of inside information'. While also adopting the term 'sensitive period of inside information', article 10 of the Insider Dealing Directive defines it as a period between the moment when inside information was generated to the public disclosure of the information or the moment when the information had no significant impact on the market price of the subject securities. The SL 2020, on the other hand, does not stipulate such period but simply makes it unlawful for a person in possession of inside information as an insider to engage in any prohibited activities specified in article 53 of the SL 2020 before the information in question became publicly available.

Both the SL 2020 and the CL 1997 provide that a person who possesses inside information as an insider commits insider dealing if he deals in the very securities to which the information in question is related.[21] The circumstances referred to in both provisions are the purchase or disposal in question. While the terms 'dealing' or 'buy' and 'sell' are defined in the SL 2020 and the CL 1997, it is generally believed that the terms should be interpreted more broadly than just direct purchase or disposal to avoid loopholes which allow perpetrators to exploit their information advantages. Article 13 of the Insider Dealing Directive serves as a useful reference as it provides two specified circumstances in which dealing is prohibited: (1) in the name of an insider, buying or selling the subject securities directly or relying on others; and (2) in the name of a person other than the insider, buying or selling the subject securities. The Directive goes

[21] The SL 2020, article 53 and the CL 1997, article 180, para 1.

further to provide that a person deals in the subject securities in another's name if (1) he provides, directly or indirectly, securities or funds for another person's purchase of the subject securities and collects all or part of the profit gained accordingly; or (2) he has rights to manage, use and dispose of the subject securities in another person's possession. This is further supplemented by article 54 of SL 2020 by preventing employees of stock exchanges, securities firms, securities service providers and other financial institutions, civil servants of securities supervisory bodies, and employees of relevant trade unions from trading on or asking other people to trade on any undisclosed information apart from any inside information.

The second prohibition relates to disclosing inside information. Article 53 of the SL 2020 and article 180 of the CL 1997 provide that a person in possession of inside information as an insider is liable for insider dealing if he discloses the information. It is specified by article 53 of the SL 2020 that in the context of insider dealing, disclosure of inside information itself is unlawful. In other words, an insider may still be liable for insider dealing if the disclosure of inside information was not intentional but merely in error. Unauthorised disclosure of inside information may lead to two likely consequences: the informed third party (the tippee) may use the information to trade in the relevant company's securities, or pass on the inside information to others. It would appear that the purpose of the provision governing the above practices is to set an objective standard, meaning that there is no need to prove actual use by the third party of the inside information in question.[22] One point of argument is whether this provision also prohibits the third party from further divulging the information to others. Some take the view that, as far as disclosure of information is concerned, there should be no difference between disclosure by insiders themselves and disclosure by third parties.

The third prohibition provided by the SL 2020 and the CL 1997 is that of suggesting another person to deal in the subject securities. Under the SL 2020, a person in possession of inside information as an insider is liable for insider dealing if he suggests another person to purchase the subject securities. There has been no further elucidatory statutory interpretation of 'suggesting'. The offence of suggesting under the CL 1997 is worded differently from that in article 53 of the SL 2020, with article 180 stating that a person is guilty of insider dealing if he

[22] Liu, Ying, 'A Discussion of Identify Insider Trading in the Securities Markets' (2005) 18 *Economy Forum* 106.

expressly indicates or implies to any person that he deal in the subject securities or disclose inside information. It is clear that this offence applies not only to directly giving advice or instruction to another person to deal in the subject securities, but also making any suggestions to such person. What is unclear, is whether to establish that the insider has encouraged another person to deal in the securities or disclose the inside information, it must be shown that this resulted in the informed party ultimately trading in the subject securities. The absence of any further elucidatory statutory interpretation or provision has once again led to a number of practical difficulties.[23]

Concluding Observations

During China's period of transition from a highly planned economy to one that is far more market-orientated, China has paid increasing attention to one type of unfair practice in the securities market: insider dealing. The CL 1997 and the IID 2012 imposed criminal liability for insider dealing but did not provide any civil remedy for the company or for the unsuspecting outsider. The SL 2020 seeks to introduce a new type of US style class action that allows China Securities Investor Service Centre to file class action lawsuits on behalf of the investors on an implied basis. This however, would not benefit the investors suffering loss from insider dealing because of a lack of detailed rules on insider dealing related civil remedies.

Of all the SL 2020's objectives, combating insider dealing is one of the most central ones, as this issue is universally considered a major problem in modern China. The SL 2020 was the main weapon against insider dealing, with a series of other regulations playing a supporting role. Nevertheless, a number of deficiencies in insider dealing regulation remain. Firstly, the basic elements of insider dealing—insiders, inside information and prohibited insider dealing practices—are not clearly defined in the legislation. This in turn leads to a number of practical difficulties. Secondly, civil remedies for investors suffering loss from insider dealing remain

[23] It is a common view that the above forms of conduct themselves constitute transactions covered by insider trading rules or that fall into the category of insider trading.

problematic. Thirdly, lack of definition and clarity in the regulations themselves is a barrier to their successful implementation.